

ADMINISTRATOR'S MEMORANDUM

TO: Regions and Water Allocations Bureau
FROM: Norm Young *NY*
DATE: June 17, 1992 Application Processing No. ~~52~~53

RE: Approval of Applications in the Snake River Basin and Bear River Basin Moratorium Areas

On May 15, 1992, the Director, by moratorium order, prohibited further approval of water right applications for surface and groundwater within the Snake River Basin and the Bear River Basin. The Director exempted some narrow uses from the moratorium prohibition. The exemptions are:

1. Supplemental irrigation, from groundwater, of cultivated land normally delivered a full supply of surface water which is not available due to the drought.
2. Domestic uses as defined in Idaho Code § 42-111.
3. Nonconsumptive uses as defined in Idaho Code § 42-605A.

The moratorium only applies to pending applications, or applications filed in the future. Development pursuant to already approved permits may be completed.

All water right applications prohibited by the moratorium will be held in the regional offices without advertising. When an applicant files an application for permit with the Department, the applicant should be informed of the moratorium, and his application should be evaluated to determine whether his proposed use is exempt. He should be granted an opportunity to submit information to qualify for the exemption.

We cannot refuse to accept an application. By filing the application, the applicant can establish an earlier date of priority.

Each of the exemptions and the method of processing is explained below:

EXEMPTIONS

Supplemental Groundwater Irrigation Supply

An applicant seeking approval for supplemental irrigation must show that he has irrigated his land with a full supply of

MEMORANDUM
Moratorium Areas
Page - 2

surface water which is not available due to the drought. Where there has been ample storage water in the past, such as in the Boise River and upper Snake River areas, the review of application for supplemental irrigation from groundwater should be cursory. In other areas where there is very little storage, and some surface water sources have not provided a full supply of irrigation water, we must scrutinize the applications more carefully. For instance, a recent application seeking a groundwater diversion stated that its normal supply of water is cut-off about June 15 of each year. A high water right does not qualify as a full supply of water, and we cannot process a supplemental groundwater application. Where water rights may be deliverable through a portion of the year, we will review the applications on a case-by-case basis.

Any supplemental irrigation approval will expire at the end of the 1992 irrigation season. The application will be retained in the files of the Department of Water Resources, and the proposed date of priority will be preserved. If the drought persists in subsequent years, the applicant can petition the Department of Water Resources for an additional one year approval. The Department will continue to hold the application, as well as other applications which are not exempt. If the current drought cycle ends, and the Director determines that the moratorium should be lifted, the applications can then be processed in their order of proposed priority.

At the time of reprocessing an application for permit which has previously received temporary approval, but is now being processed for a permanent water right, notice of the application must be republished. The applicant must pay a readvertisement fee.

The cover letter mailed to all supplemental permit holders states that when the permit expires, the water user must make the pump and motor inoperable. The pump and motor may be made inoperable by proper abandonment of the well, removal of the pump or power supply, interruption of the power supply at the transformer fuses, or other assurances of regulation to prevent diversion without approval.

The holder of a temporary permit is not entitled to use groundwater as a primary source of water. The surface water must remain appurtenant to his land, and be used, to the extent possible, on the traditional place of use. Any violation of the condition results in the automatic revocation of the right to divert groundwater. Applicants should be cautioned that the sale, transfer, lease or use of their surface water on other lands not authorized for diversion may be a violation of the condition.

A condition of approval requires location of any new wells at least 500 feet from existing wells, unless waived by the Department. The Department recognizes that 500 foot well spacing may not be possible for smaller tracts of land. The Department also recognizes that wells drilled for smaller tracts of land will not impact other users to the degree a larger well will. The water right holder is responsible for requesting approval of spacing less than 500 feet.

Domestic Uses

The definition of domestic use is found in Idaho Code § 42-111. Idaho Code § 42-111 describes domestic use as the use of water for homes if the total irrigation does not exceed one-half acre of land and total use does not exceed 13,000 gallons per day. The statute specifically excludes multiple owner subdivisions unless the diversion rate and volume limitations are satisfied.

The moratorium did not intend to prohibit development of multiple unit subdivisions served by a single community well. A subdivision with platted lots of less than one-half acre is exempt from the moratorium. A condition must prohibit irrigation or use of water on any lot upon which there is no domestic dwelling constructed. Furthermore, the construction of two or three domestic dwellings on a single lot does not justify irrigation of one-half acre for each of the dwellings. Only one-half acre may be irrigated per single platted lot.

Nonconsumptive Uses

The moratorium order exempts nonconsumptive uses as defined by Idaho Code § 42-605A. Idaho Code § 42-605A defines nonconsumptive use as "a water right . . . designated by provisions of the permit or license issued by the Department of Water Resources, or otherwise so designated by the Director, or by the decree of court allowing use of the right to continue when diversion of earlier priority water rights from the same source has been reduced or stopped by action of the watermaster."

Proposals for nonconsumptive uses must be evaluated on a case-by-case basis. Traditional uses that have been termed "nonconsumptive" may actually have a consumptive component which must be quantified. For instance, aesthetic or recreational ponds seep and evaporate. The evaporation from a pond with one acre surface area is approximately equivalent to the consumptive use of one acre of alfalfa. Furthermore, if a surface water source is being stored, and the seepage into groundwater is significant, the loss may injure other surface water rights.

The applicant must demonstrate that his use is truly nonconsumptive, or must somehow compensate for any water lost by obtaining and transferring an existing water right.

MISCELLANEOUS ISSUES

Municipal uses are not exempt from the moratorium. The domestic component of a municipal right is exempt, however. If the municipality agrees that no new parks, golf courses or common areas will be irrigated after the new well is approved without obtaining water rights elsewhere to irrigate the property, the municipal right can be approved with conditions.

Industrial and commercial uses are difficult to categorize because of their variety. Some industrial and commercial uses may qualify for the small domestic exemption in Idaho Code § 42-111B. Other industrial and commercial uses may be totally nonconsumptive. Some, however, may have large consumptive components. Commercial and industrial use applications which are consumptive are prohibited by the moratorium, and users must obtain water by acquiring and transferring an existing water right.

The Department will also review applications for pre-existing use to determine whether they should be approved. In some cases, the Department has held an application without cause, and our failure to review and approve the application resulted in the application now being held by the terms of the moratorium. These applications should be processed.

The moratorium does not supersede existing GWMA, CGWA, or moratoria. Water management in these designated areas will be in accordance with the previously issued existing order.

The moratorium will be reviewed from time to time and lifted when drought conditions are no longer widespread.